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ABSTRACT

Students' understanding of lawyers and the legal system may be increased through the five law-related ethical issues presented in this document. Legal ethics is defined as: (1) the minimum standard of professional conduct in daily legal situations; and (2) a lawyer's broader responsibility to society. The ethical issues are presented in three segments and through a review of actual law cases which include: (1) preserving clients' confidences and defending wealthy drug smugglers; (2) mandating pro-bono service and allowing advertising for legal services; and (3) disciplining incompetent lawyers. Included in the guide for each segment are a discussion of issue(s); a summary with background information; the key points; optional case studies with the court decisions; the reasonings; and the citations provided. A 14-item annotated bibliography is included. (DJC)

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TEACHER'S GUIDE FOR SECONDARY SCHOOLS

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INTRODUCTION

Ethics On Trial provides an informative look at ethical dilemmas faced by lawyers. Through an examination of five issues—preserving clients' confidences, defending wealthy drug smugglers, mandating *pro bono* service, allowing advertising for legal services, and disciplining incompetent lawyers—the program raises questions about what constitutes ethical behavior for the legal profession. The program describes these issues and personalizes them through discussions with those who face these dilemmas daily. This Guide is not designed to provide definitive answers to the many questions raised in the program. Rather, it is an attempt to present more detail on a few of the issues and provide suggestions on how teachers and their students can explore more fully the controversies raised by *Ethics On Trial*.

Most young people know very little about lawyers and the practice of law. Their information is largely derived from the portrayal of lawyers in the media or personal anecdotes from friends or family. To help young people better understand lawyers and the legal system, *Ethics On Trial* provides an opportunity to learn about ethical issues that lawyers face in their daily practice and to think critically about the role of lawyers in society.

HOW TO USE THIS GUIDE

This Guide is designed to be used during three class periods. The five areas of the program have been grouped into three Segments, with educational activities for each segment. The video portion of each segment is approximately 19 minutes in length. The Segments are arranged as follows:

- **Segment One—THE CONFLICT WITHIN US** (attorney-client confidentiality and defending people believed to be guilty)
- **Segment Two—THE DELIVERY OF LEGAL SERVICES** (mandatory *pro bono* work and legal advertising)
- **Segment Three—REGULATING THE LEGAL PROFESSION** (disciplining lawyers who act improperly)

The Guide has been written with the expectation that teachers will use the video over the course of three class periods. Recognizing that an individual teacher's schedule may not permit this, each of the Segments and accompanying lessons can be used to focus on a discrete topic. In addition, the lessons to accompany each Segment recommend that teachers stop the video part way through to discuss important issues before viewing the rest of the program.

On page 4 is an opinion inventory for students to respond to before they view *Ethics On Trial*. This inventory will help students focus their attention as well as spark their interest in the topics covered by the entire program. Teachers also may want to administer the opinion inventory to students after viewing and discussing the entire program to evaluate whether the program changed students' opinions.

ORGANIZATION OF THE GUIDE

Each Segment has been designed for easy use by teachers and follows a similar format:

- **ISSUES PRESENTED:** One or two questions that identify the issues raised in each Segment.
- **SEGMENT SUMMARY:** An overview with background information (case law, policy arguments, related issues).
- **KEY POINTS:** A brief summary of main points introduced in each Segment.

- **METHODS:** A guide to introduce each Segment in the classroom. Methods are designed to involve students actively in their own learning and in the issues raised in the video. Each Methods section includes:

1. **Previewing Questions and Activities**—A question or brief activity designed to focus students' attention on the issue raised in that Segment as well as to relate it to the students' own lives;
2. **At the Break**—One or two questions designed to be asked during the video presentation to monitor students' comprehension as well as to discuss the ethical issue involved in each Segment of the program;
3. **Postviewing Questions and Strategies**—A series of four to six questions and activities that have been designed for use in the classroom to help students explore the content of each Segment. Additional questions ask students to assemble and analyze competing policy arguments raised in each Segment and apply them to new situations. Each set of questions also contains one question designed to improve students' analytical skills. These questions ask students to evaluate specific statements that distinguish between ethical decisions and factual decisions. Each Segment contains at least one class activity (*e.g.* role-playing, small groups). Teachers may wish to modify or add to the questions and strategies provided. Where appropriate, suggested answers are provided for teachers.

- **CASE STUDY:** Each lesson contains a case study that illuminates an issue raised by the video. Case studies require students to analyze problem situations and reach their own conclusions concerning the outcome. Each case study is based on a real case, and the Guide provides teachers with the actual decision, reasoning and citation. In reviewing a case study it is suggested that teachers follow this procedure:

1. **Review the Facts:** What happened? Who are the parties? What information is missing? Why did people act the way they did?
2. **Frame the Issue:** Students should identify and discuss the issues or problems presented by the case.
3. **Discuss the Arguments:** What are the most compelling arguments on each side of the case? What are the consequences of each course of action?
4. **Reach a Decision:** Ask students how they would resolve the case and why. Compare the actual result and the court's reasoning with that of the students.

BACKGROUND INFORMATION FOR TEACHERS

Legal Ethics and Social Responsibility

Each of us is forced to make ethical decisions daily. It may be something as simple as deciding to tell the cashier at the grocery store that one was given too much change instead of keeping silent. Essentially, ethical decisions relate to making socially responsible choices, choices about what is right or wrong, fair or unfair. While some people might argue that there are no right or wrong answers to ethical questions, there are some basic ethical principles, or values to which most people adhere, and which provide guidance in making ethical decisions. These principles include respect for human life, honesty, equality, justice, and truth. The most difficult ethical decisions are those in which basic values are in conflict. For example, a newspaper's deci-



sion to print a story about an individual might involve a conflict between two values—the public's right to know versus the individual's right to privacy.

Ethics On Trial explores questions of legal ethics. As used in the program (and in this Guide), the term 'legal ethics' has two meanings. First, it refers to a minimum standard of professional conduct in specific, day-to-day legal situations. Such behavior is often strictly mandated by the legal profession. Second, it refers to a lawyer's broader ethical responsibility to society. In these latter instances, the issue is not what a lawyer *must* do or must not do, but rather what a lawyer *should* do or should not do. In this sense, the term 'legal ethics' suggests an obligation of social responsibility toward all citizens.

Since 1908, the American Bar Association (a national association of roughly 50 percent of all lawyers) has provided guidelines for these legal ethical standards in the form of 'model codes.' The most recent version, adopted by the ABA in 1983, is the *Model Rules of Professional Conduct*. However, such national codes are advisory only. Each state bar is responsible for promulgating its own set of ethical codes which are legally binding on lawyers practicing within the state's boundaries. In the past, state codes have followed the national guidelines closely, but increasingly there is a tendency to diverge on some important issues.

Analytic Framework

In exploring legal ethics with students, bear in mind the two issues that Fred Graham sets forth in the introduction of the program. The first is the public's perception that 'lawyers' ethical rules are too often geared to protect the lawyer's status and wealth rather than the public's rights. This perception must be considered in light of the second issue (as Graham suggests) that, "Most of us just simply don't know much about our system of justice, and we end up blaming lawyers for doing what they ought to do and are bound to do by legal and ethical considerations."

There is a certain ambiguity inherent in the practice of law. In many instances the work of a lawyer within the context of the legal system appears to defy common notions of morality. For example, lawyers must sometimes argue points with which they personally disagree; defend unpopular people and controversial causes; convince juries to free a person a lawyer knows is, in fact, guilty.

In addition, as you and your students watch *Ethics On Trial*, the following questions about societal values and the legal profession provide a framework for analyzing what constitutes ethical conduct:

- Is there a difference between how the public expects a lawyer to act and how the law requires a lawyer to act in these situations? What are the advantages and disadvantages to making "rules" of conduct?

- Should a lawyer's duty primarily be to the client or to society? Which is more important: a lawyer's duty as an officer of the court or a lawyer's obligation to a client?
- Should a lawyer ever withhold information or provide inaccurate information?

The Current Landscape

The American legal profession has gone through some dramatic changes over the last fifteen years. As of 1987, there are more than 700,000 licensed lawyers in the United States compared with about half that number in 1970. One estimate is that at the present rate of growth, there will be one million lawyers in America in the year 2000. Some ask whether this increase in lawyers is detrimental to the national interest. As Derek Bok, President of Harvard University, has observed, "Far too many of these rare individuals are becoming lawyers at a time when the country cries out for more talented business executives, more enlightened public-servants, more inventive engineers, more able high school principals and teachers." Some believe that an oversupply of lawyers is responsible for an explosion of frivolous and costly law suits.

Public Image

Lawyers have always been easy targets of public criticism and always will be. It is only natural that people sometimes resent a profession they are so dependent on, and it is only human nature for the losing party in a legal dispute to blame the lawyer, even if he or she did everything possible to win. In the end, most people do like and trust their own lawyer. It's the profession as a whole that they do not trust.

Lawyers, in general, are poorly regarded by the public. In fact, their image has deteriorated in recent years. The evidence suggests that this is due to the public's perception that the legal profession's ethics just are not very sound. They are too often viewed as unscrupulous "ambulance chasers" and "hired guns"—quick to promote useless litigation and extract exorbitant fees, to prey on society at large for the benefit of a narrow band of interests.

While some of this scorn may well be deserved, a good deal of it stems from a fundamental lack of public understanding of the lawyer's unique role as an advocate, a role often demanding behavior that seems to be totally at odds with general notions of morality, even though it is legally and professionally "ethical."

This is a dilemma increasingly recognized by such professional organizations as the American Bar Association and the Association of Trial Lawyers of America, both of which are trying to develop programs to better educate the public on the nature of the adversary system.

OPINION INVENTORY ABOUT LAWYERS

Before students view the program, have them complete the following opinion inventory relating to lawyers and legal issues addressed in the show. Teachers may want to review the class results of the inventory as an introductory activity before viewing the first segment. In addition, teachers may want to have students review this inventory at the end of the entire program to evaluate whether opinions have changed.

For each of the statements below circle the response that reflects how you feel about lawyers.

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
a. Lawyers follow high ethical standards.	SA	A	U	D	SD
b. Lawyers' fees are reasonable.	SA	A	U	D	SD
c. A lawyer should not represent someone he/she knows is guilty.	SA	A	U	D	SD
d. Lawyers should be allowed to advertise their services.	SA	A	U	D	SD
e. Lawyers work hard to protect their clients' interests.	SA	A	U	D	SD
f. There are too many lawyers in the United States.	SA	A	U	D	SD
g. Too many disputes end up in court because of lawyers.	SA	A	U	D	SD
h. Plea bargaining (when a defendant agrees to plead guilty to a lesser charge) should only be used in less serious cases.	SA	A	U	D	SD
i. A lawyer should always withdraw from a case if he/she learns that the client is going to commit perjury.	SA	A	U	D	SD
j. A lawyer should be required to provide free legal services to the poor.	SA	A	U	D	SD

SEGMENT ONE

The Conflict Within Us

ISSUES PRESENTED

- Does a lawyer always have a duty to protect a client's secrets?
- How can a lawyer defend a client whom the lawyer knows is guilty?

SUMMARY

Segment One examines two difficult ethical issues that confront the criminal defense lawyer and that often seem to pit legal ethics against public notions of decency and morality.

The first part deals with the concept of "confidentiality"—the lawyer's duty to protect the confidence and secrets of the client. The wrenching conflicts that this can produce is illustrated by a true-life case in which a client proved to his attorneys that he had killed two missing teenaged girls, but the lawyers believed themselves duty bound to withhold this information from the police and the girls' frantic parents in the absence of their client's permission to disclose it. This case pits the attorney's duty to the client directly against other responsibilities to the legal system and society in general.

Issue One: The Lawyer's Duty of Confidentiality

Prominent in both of the cases in Segment One is the relationship of the lawyer and client in the context of the adversary process. We are all familiar with the image of the adversarial process—two lawyers doing battle in the courtroom on behalf of their clients. The notion is that justice will be served if the lawyers can concentrate on zealously representing their respective sides while allowing the fact-finder,

either judge or jury, to glean the truth from testimony and physical evidence. Central to the adversary process is a lawyer's duty to the client. Within the rubric of this duty, lawyers are required to represent their client's interests zealously, avoid conflicts of interest, and maintain the strictest confidentiality with a client's disclosures.

While the notion of confidentiality between a lawyer and client is critical, it has its limits. For example, courts have required lawyers to reveal a client's plan to commit future criminal acts or to commit perjury as well as to turn over evidence from the crime. In these cases, the court has balanced the lawyer's duty to the client against the duty of the lawyer as an officer of the court.

The Garrow Serial Murder Case (Missing Bodies)

Segment One illustrates these conflicts through a famous case history—the Robert Garrow serial murder trial. In July 1973, Garrow, a 38-year-old mechanic with a past criminal record, was arrested in upstate New York for murdering Philip Dombrowski, an 18-year-old student. But Garrow confided to his court-appointed attorneys, Frank Armani and Francis Belge (pronounced BELL-gee), that he had also killed two young girls, 16-year-old Alicia Hauck and 21-year-old Susan Petz, who had been reported missing. Garrow's directions led his lawyers to the girls' bodies, proving his story.

Yet without Garrow's permission, the attorneys felt legally and ethically bound to withhold information about the Hauck and Petz murders from both the authorities and the girls' parents who were desperately seeking information about their daughters' fate.

It was only a year later in the course of the Dombrowski trial that Garrow suddenly admitted publicly to the girls' murders, with the further revelation that his lawyers had long known and had tried to use the information to plea bargain with the prosecution.

The public was outraged at what was perceived as the lawyers' disregard for common decency. One prosecutor thought they should be charged with obstruction of justice. Another prosecutor, Judge William Inteman, thought they were right to maintain Garrow's secret but wrong to try to plea bargain with the information. Inteman argued that this undermined their role as "an officer of the court responsible to society and the court."

There was an effort to bring both criminal charges and professional disciplinary action against the lawyers, but in the end Armani and Belge were totally cleared, the New York Courts and the New York Bar Association upholding the principle of confidentiality as the cornerstone of the attorney-client relationship and, by extension, of the American system of justice. The overriding principle is that without a guarantee of confidentiality, a client might fear to entrust defense counsel with critical information needed for a proper defense, and so would be denied the Constitutional right to competent counsel.

The Garrow case has proven to be a "classic," taught in law schools from coast to coast. While most lawyers and virtually all courts agree with the legality and ethical propriety of Armani's and Belge's actions, many attorneys still balk at the implications of what they did in everyday moral terms. The Garrow case raises the horrible conflicts that arise as a result of the confidentiality principle between professional ethics and common decency, and between obligations to the client and those to the court and society.

Past Crimes and Future Conduct

A fact that might make the Garrow case easier to reconcile is that the client's crime had already occurred by the time he revealed it. A tougher question is what happens when a lawyer finds out that a client plans a future crime, like robbing a bank or swindling a corporation. Rule 1.6 of the ABA Model Rules of Professional Conduct, while generally prohibiting a lawyer from revealing a client's confidential information, does permit, though it does not require, a lawyer to reveal such information to prevent future crimes that are likely to result in imminent death or substantial bodily harm. It should be emphasized that some state ethics codes *do* require a lawyer to disclose a client's confidential information in order to prevent crimes.

Issue Two: Hired Gun Or Constitutional Duty

"In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense."

Amendment VI, U.S. Constitution

At the end of Part Two Segment One of the program, Harvard law professor, Alan Dershowitz points out that the vast majority of criminal defendants in our country *are* guilty, raising one of the most difficult questions for the average person to understand how can lawyers represent people they know are guilty, especially when the crime is a heinous one? For defense lawyer Neal Sonnet, the answer lies in the Constitution, which, as he points out, "requires that people have the right to counsel no matter how despicable they are, no matter how much they may have committed crime, no matter how horrible those crimes may be." Additional reasons that some lawyers site for defending such people are (1) the lawyer's job is not to determine guilt or innocence—that is the job of the judge or the jury; (2) the adversary system operates properly only if the defendant is provided an adequate defense; (3) justice is a process not merely a result; and (4) some lawyers gain self-satisfaction in getting someone acquitted.

The program quickly turns to a current constitutional dispute to illustrate this ethical issue. It concerns forcing defense attorneys to forfeit their legal fees. The Comprehensive Forfeiture Act of 1984 permits the impounding of income or property derived from drug smuggling or racketeering. This has allowed, for example, the confiscation of cars, planes, and other items purchased with "tainted" money, which was acquired through these illegal acts. While the Act does not specifically mention legal fees, the Justice Department argues that such fees, when paid with "tainted" money, should be forfeited under the law.

Not surprisingly, the issue of fee forfeiture has created quite a debate within the legal profession, which this segment of the program high-

lights. Opposing forfeiture is Neal Sonnet, whose Miami practice includes defending accused drug dealers. Advocating forfeiture is U.S. Assistant Attorney General Stephen Trott. Sonnet argues that the forfeiture provision violates a person's Sixth Amendment right to an attorney. As he explains, "There is a constitutional right to lawyer, and an inherent part of that right is a right to the counsel of your choice." Moreover, as Sonnet contends (and recent surveys reflect), the forfeiture provision is having a "chilling" effect on defense attorneys' willingness to represent drug smugglers because they are afraid they will not get paid.

For Trott, the issue is whether lawyers should be allowed to keep the fee they received for defending a client against criminal charges when that money is believed to be "tainted" and therefore does not belong to the defendant. While he agrees with Sonnet that a defendant has the right to counsel, Trott counters that it does not include a right to a *choice* of lawyers. He argues that such defendants may be represented by court-appointed counsel.

At this writing, only a few lower courts have ruled on the legality of the forfeiture policy. While most have ruled that lawyer's fees should not be subject to forfeiture, "the jury is still out" on this issue.

What should a criminal defense lawyer do when a client intends to commit perjury?

Withdraw	71%
Tell the client he/she will reveal any perjury to the court	17%
Inform the court after the perjury has been committed	7%
Take no action whatever	4%
Other	1%
Not sure	4%

Totals add to more than 100% because of multiple responses.

KEY POINTS

- The adversary process is the cornerstone of the American legal system. The adversary process, in theory, is a contest between two parties where the government is specifically encumbered to protect defendants from harassment. Through this process the third party (judge or jury) is able to determine the truth.
- Because of the nature of the adversary process a lawyer serves the justice system by zealously guarding his clients interest.
- The Garrow case demonstrates how a lawyer's ethical responsibility to a client can be seen to conflict with a lawyer's moral duty to society.
- The Sixth Amendment guarantees a right to defense counsel in a criminal case. Why were Armani and Belge appointed by the court to defend Garrow?
- Criminal defense lawyers justify representing a "guilty" client based on the Constitution, the role of a lawyer, the process of justice, and professional or self-satisfaction.
- Through the Comprehensive Forfeiture Act the Justice Department attempts to confiscate legal fees paid to lawyers who defend drug smugglers where it is believed that the money has been generated by drug trafficking. The program highlights the constitutional and ethical debates that surround this practice.

METHODS

Previewing Discussion Questions and Activities

Have students complete the opinion poll on lawyers. Analyze the opinion poll by compiling the class responses and discuss the range of attitudes with emphasis on the questions that generate the greatest difference of opinion.

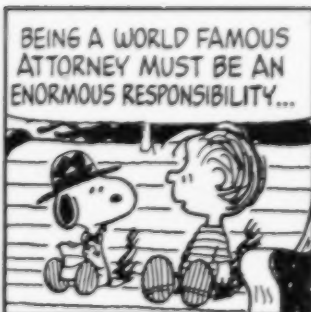
At the Break:

- At the end of the first part of this segment (at approximately 16 min.) stop the video and discuss the issue of a lawyer's duty of confidentiality. The lawyers in this episode, Armani and Belge, did not notify the police or the girls' parents about the location of the missing bodies. Why did Armani and Belge make this decision? What would have happened if they had notified the police? Do you agree with their decision not to notify the police and parents? Why or why not?
- At the end of the second part of this segment (at approximately 24 min.) have students discuss the following questions:
 - The Sixth Amendment provides that "[I]n all criminal prosecutions, the accused shall enjoy the right to have the assistance of Counsel for his defense." Why is a lawyer important in a trial? Possible responses include: a lawyer has a better understanding of the trial process; the other side is represented by lawyer; a lawyer can be more objective in making decisions.
 - What are some of the reasons why lawyers represent drug smugglers? Do you agree or disagree with the reasons? Why or why not? Reasons might include: defendants are presumed innocent until proven guilty and it is the role of judge and jury to determine guilt.
 - If you were a lawyer, would there be any types of cases that you would not accept? Why or why not?
 - Are lawyers obligated, either legally or ethically, to accept any or all clients?
- Does a person who is charged with murder have a right to a lawyer? (factual)
- Should a lawyer represent someone who he/she believes is guilty? (ethical)
- Did the lawyers in the Garrow case notify the police of the location of the bodies? (factual)
- Was it right of the lawyers to use the location of the bodies as a bargaining tool in trying to arrange a plea bargain? (ethical)
- Karen, a lawyer, is representing David who has been charged with robbing a bank. David tells Karen that he intends to rob another bank the following week. Have students decide if Karen should tell the police or remain quiet. Have students state their best reason to support their position. Is Karen obligated to inform on David? (yes in most states)
- Businessmen, like lawyers, are faced with ethical decisions. To help students see the connection between discussing legal ethics and the application of ethics in other professions, have them read the following problem:
 - The law sets limits on the emission of certain pollutants in the air. You are the owner of a small local power plant that supplies electricity to the community. The power plant is in compliance with all pollution laws. For \$500,000 you could install a filter that would reduce significantly the pollution levels of emissions from the plant. To do so would increase the cost of electricity in your community and lower the profits of the company. What would you do? Why?
 - What other professions have a duty of confidentiality? (doctors, priests, psychologists, journalists, etc.)

Postviewing Questions and Activities

- Invite a criminal defense lawyer to come into the class and view the first segment of the program with the students and discuss it with them.
- We all face ethical decisions in our own lives. The first activity asks students to examine ethical decisions they face. Brain-

storm with students about the ethical dilemmas they have experienced in their own lives (e.g., turning in a friend for cheating). Make a list on the board. Ask students to state the conflicting values involved in each of the dilemmas.



CASE STUDY

The Case of the Lying Client

The Garrow case in Segment One of the program raised the issue of a lawyer's duty of confidentiality. The following case raises the same issues in the context of what a lawyer should do when he or she believes that a client intends to testify falsely. As students read the facts of the case, ask them to think about the following questions: "How should the lawyer in this case balance the duty to represent a client zealously with the duties of an officer of the court?"

FACTS: Calvin Love was stabbed to death by Emmanuel Whiteside as the two fought over a drug deal. Whiteside was charged with murdering Love. Whiteside claimed that he had acted in self-defense. Although he initially told his lawyer he did not see a gun, he was nevertheless convinced that Love had a gun. The police did not find a gun in their search after the murder. A week before his trial, Whiteside changed his story and told his lawyer that he was going to testify that he had seen "something metallic" in Love's hand before the stabbing. Whiteside said, "If I don't say I saw a gun, I'm dead." Whiteside's lawyer said that if Whiteside insisted on telling this story in court, the lawyer would withdraw from the case and inform the judge that Whiteside was lying. Whiteside agreed not to testify about the gun and was convicted of murder. Whiteside appealed the decision to the U.S. Supreme Court claiming that the defense lawyer's refusal to let him testify as he wanted violated his Sixth Amendment right to have effective legal counsel, and therefore denied him due process.

Questions

1. How was Emmanuel Whiteside's second story different from his first story? Why did his lawyer threaten to withdraw from the case.
2. What arguments might Whiteside make to justify his claim that his lawyer acted improperly and that he did not receive a fair trial? (Arguments include that a lawyer should represent a client, not "judge" him, and that the lawyer could not be absolutely certain that Whiteside was lying.)
3. What arguments might his lawyer make to justify his threat to withdraw from the case and tell the judge that Whiteside was lying? (Arguments include that a lawyer is an officer of the court and therefore should not allow anyone to testify falsely, and that Whiteside still was allowed to testify in the case.)
4. In your opinion, did Whiteside's lawyer act improperly in not letting him testify about seeing a gun? Briefly explain your answer. (Answers may vary, and students should give reasons to support their answers.)
5. Optional Activity: Conduct a mock Supreme Court session. Divide the class into three groups. Have Group One present arguments in favor of Whiteside. Have Group Two present arguments for the lawyer. Have Group Three act as judges on the Supreme Court and decide the case. Discuss the activity by comparing the result with the actual decision in the case.

NOTE: This case is based on *Nix v. Whiteside*, ____ U.S. ____ (1986). The U.S. Supreme Court held that Whiteside's Sixth Amendment right to counsel had not been violated. Writing for the Court, Chief Justice Burger said that the lawyer acted within the accepted standards of professional conduct. The Supreme Court ruled that under no circumstances may a lawyer either advocate or passively tolerate a client's giving false testimony. Chief Justice Burger wrote that a client does not have a constitutional right to lie (i.e., commit perjury).

*At the printing of this guide the case had not been recorded.

SEGMENT TWO

The Delivery of Legal Services

ISSUES PRESENTED

- Should lawyers be required to provide *pro bono* services to the indigent?
- Does the practice of lawyers advertising their services diminish their professionalism or does it provide consumers with expanded access to more affordable legal services?

SUMMARY

The first segment of *Ethics On Trial* focused on how an individual defense lawyer should act when facing specific ethical dilemmas. In that context a number of questions were raised that relate to the lawyer's duty to society. The second segment of the program returns to this issue through an examination of how well the legal profession is able to provide its services to the public. Does the legal profession adequately serve those who cannot afford legal representation? If not, should it be forced to provide such services? Should there be any restrictions on soliciting clients by lawyers? Has the practice of law become more a business than a profession?

Segment Two focuses on the delivery of legal services in cases that involve civil laws. Civil laws regulate relationships between individuals or groups of individuals (e.g. contracts, real estate, divorce, wills). This segment of the program examines the structure and functioning of the "market" for lawyers. The term "market" as used here refers to a variety of issues. The market for lawyers involves a consideration of the availability—the supply and demand—of legal aid to the poor, cost-effective ways of providing legal assistance, and, ultimately, the ability of lawyers to compete in an open market for clients. The Segment is divided into two parts. The first part examines a lawyer's duty to provide legal assistance to the poor through *pro bono* services. The second part of this segment chronicles the changing ways in which lawyers provide and market their services to the public. Specifically, this part features the controversy that surrounds advertising and the emergence of legal clinics.

Issue One: "Pro Bono Publico"

"... A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf..."

Preamble A Lawyer's Responsibilities
ABA Model Rules of Professional Conduct (1983)

The quotation above describes a lawyer's ethical and social responsibility to provide *pro bono* services to the poor. *Pro bono publico*, as Fred Graham explains, means "in the public interest," or in practical terms, providing free or reduced fee legal service to the poor. As an ethical responsibility, the legal profession has, with the solitary exception highlighted in the program, considered *pro bono* services to be voluntary, leaving it up to each lawyer's conscience. As the pro-

gram points out however, to date, lawyers' participation in *pro bono* activities has been sparse. For example, it is estimated that four out of five lawyers do not provide any *pro bono* services.

The idea of lawyers providing *pro bono* services, as the discussion in Segment Two reflects, raises many professional, ethical, philosophical and practical questions for lawyers. The tension between providing legal services to the needy and making a living in an increasingly crowded legal profession is implicit in many of the lawyers' comments during this segment.

In 1974 Congress created the Legal Services Corporation to fund local agencies that provide legal assistance to the poor. Reduced federal funding for legal services over the past several years has limited the availability of legal aid to the poor and focused the public's attention on the legal profession to help solve this problem. It is estimated that in the United States 40 percent of the public cannot afford legal services. The response of the legal profession has been to encourage individual lawyers as well as state bar associations to develop and participate in *pro bono* activities.

The first part of Segment Two highlights one of these programs—the Volunteer Lawyers Project, sponsored by the Boston Bar Association. The program shows Broger Hawkins, a poor Bostonian, able to file for bankruptcy with the help of a volunteer lawyer—a lawyer he could not otherwise have afforded. In this Boston project 1,000 volunteer lawyers handle 2,000 cases a year to help supplement the need due to reduced services by legal aid agencies. As this segment points out however, more than 16,000 cases appeal to these legal aid agencies annually.

Segment Two then raises the question, "If enough lawyers are not willing to provide voluntary service, should the bar require it?" The mandatory *pro bono* program in El Paso, Texas is profiled in which lawyers are required to handle two cases a year. In El Paso, 80 per-

cent of the lawyers participate in the program. Eugene Semko, who is shown handling a *pro bono* divorce as part of the program explains, "I think it's great. Seeing it in action, I realize it doesn't take a whole bunch of time and detract from my other work."

Not all lawyers agree with Semko's enthusiasm for mandatory *pro bono* work. Opponents agree that lawyers have a responsibility to provide such service, but take issue with the idea of requiring it. For lawyers like Ted Klein mandatory *pro bono* service is unfair, unworkable, and perhaps unconstitutional. Klein, who helped establish a voluntary *pro bono* program in Miami, argues that it is not fair to place the burden of providing services to the poor only on the shoulders of the legal profession: "We don't make doctors provide free services or bakers to give away bread to the poor." Moreover, Klein contends that such a system is unworkable because of practical concerns, as well as those of principle. For example, Klein asserts that most lawyers do not understand the unique needs of the poor because they specialize in other fields of the law. Other opponents to mandatory *pro bono* contend that it would violate the Fifth Amendment of the Constitution, which says that private property cannot be taken without just compensation.

However, proponents of mandatory *pro bono* point to the success of the El Paso project in having easily overcome every practical objection to such programs, at least at the local level: exemptions amounted only to about 20 percent of the available lawyers and were easily granted; only a bare handful of lawyers ultimately refused to participate; cases were simple and caseloads were unobtrusive; where the problems of the poor required special knowledge, experienced legal assistance attorneys were used rather than *pro bono* draftees. The only problem not resolved was the constitutional one—whether a lawyer can be compelled to provide free service. Legal challenges to the El Paso project are a distinct possibility.

DO YOU NEED A LAWYER?

LEGAL SERVICES AT VERY REASONABLE FEES

- Divorce or legal separation—uncontested (both spouses sign papers)

\$175.00 plus \$20.00 court filing fee

- Preparation of all court papers and instructions on how to do your own simple uncontested divorce

\$100.00

- Adoption—uncontested newspaper proceedings

\$225.00 plus approximately \$10.00 publication cost

- Bankruptcy—can business, or contested proceedings

Individual: \$750.00 plus \$50.00 court filing fee

Wife and husband: \$300.00 plus \$110.00 court filing fee

- Change of Name

\$60.00 plus \$20.00 court filing fee

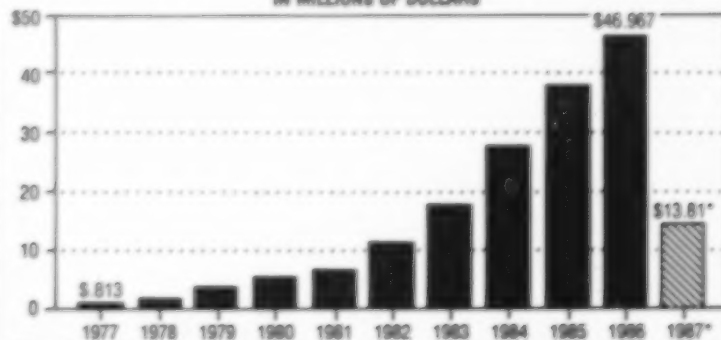
Information regarding other types of cases furnished on request

Legal Clinic of Bates & O'Steen

617 North 3rd Street
Phoenix, Arizona 85004
Telephone (602) 252-6888

MONEY LAWYERS SPEND FOR TV COMMERCIALS

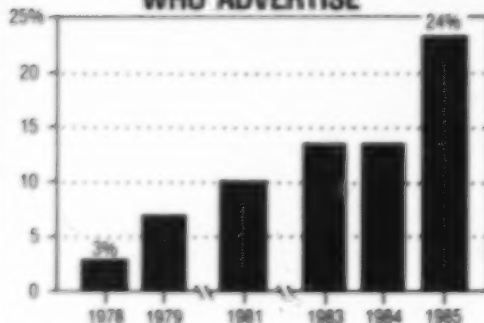
IN MILLIONS OF DOLLARS



SOURCE: Television Bureau of Advertising

*Figure is for the first quarter of 1987.

PERCENTAGE OF LAWYERS WHO ADVERTISE



SOURCE:
American Bar Association Journal,
Worcester, MA Telegram

Issue Two: The Legal Profession Comes of Age

Segment Two next examines the extent of lawyers' ability to solicit clients. On one level this is a debate over the commercialization of the legal profession through advertising and other business practices. What are the professional and constitutional implications of allowing or prohibiting lawyers from advertising? On another level, this part of the program raises the issue of how to provide information and affordable legal services to middle-class America.

The Bates Case

Fred Graham begins this part of the program by observing that the Supreme Court is where "many of the issues of legal ethics have been resolved." The case explored here, *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) has had a great impact on the legal profession.

In 1974, two young lawyers, John Bates and Van O'Steen opened a "legal clinic" in Phoenix, Arizona. Van O'Steen explains that the clinic was not an immediate success. The problem was, "We were not able to inform a large segment of the public about our service to justify the delivery of services at lower prices."

So in February 1976, the lawyers placed an advertisement in the *Arizona Republic*, the state's largest daily newspaper. The advertisement read, "DO YOU NEED A LAWYER? LEGAL SERVICES AT VERY REASONABLE FEES" and went on to list fees for such matters as uncontested divorce, adoption, and bankruptcy. While this advertisement was mild compared to some current ads, the Arizona Bar Association charged the lawyers with violating a disciplinary rule that prohibited lawyers from advertising in newspapers, on radio and television, and even in the Yellow Pages.

The case eventually made its way up to the Supreme Court where Bates and Van O'Steen argued that the prohibition on advertising stifled competition, kept prices high, and violated their First Amendment right of free speech. On June 27, 1977, the Supreme Court ruled by a 5-4 margin that lawyers have a constitutional right to advertise their services so long as the advertisements are not "false, deceptive or misleading."

While the Supreme Court ruling stands as the law of the land, the debate over lawyer advertising continues within the profession. This part of the program showcases that debate. Led by former Chief Justice Warren Burger, opponents of lawyer advertising claim that, constitutional or not, it has an adverse impact on the professional image of lawyers by seeming to equate the practice of law with selling used cars. Opponents of advertising assert that the practice of law is special. The former Chief Justice argues, "Just because the Constitution permits an act doesn't make it ethically acceptable for the privileged practice of law." And, as former U.S. Solicitor General Erwin Griswold says, "The practice of law is a profession and not a business." Two other arguments are presented in this segment against advertising. The first is that advertising will lead the public and lawyers to bring unnecessary lawsuits. The second is that advertising is inherently misleading.

Proponents of advertising, like Joel Hyatt, who owns a national chain of legal clinics, counter that advertising allows lawyers to provide assistance at lower cost to more people. He cites a Federal Trade Commission report that indicates lawyer advertising increases competition and thereby reduces the cost of basic legal services such as simple wills and uncontested divorce. For legal clinics, advertising produces a high volume of clients, which allows for lower set fees. Moreover, advertising provides the consumer with more information from which to make an informed choice in hiring a lawyer.

While a majority of lawyers today do not advertise, in recent years the number of lawyers who do has risen dramatically. A 1985 study showed that the percentage of lawyers who have advertised doubled from the previous year. In 1978 lawyers brought \$900,000 worth of

television advertising time. In 1986 that amount had reached nearly \$47 million. In addition, lawyers are beginning to explore the use of other marketing strategies such as telemarketing and direct mail solicitation.

Woven into the discussion of legal advertising is a brief description of the rise in the number of legal clinics spurred on by advertising. The purpose of legal clinics is to make legal services more affordable to middle-class Americans. Legal clinics accomplish this by attracting a high-volume of clients through advertising, offering lower fees, and utilizing paralegals and modern business practices (such as computers and standardized forms).

Four additional developments relating to the delivery of legal services are appropriate to consider in the context of this program. The first has been the increasing attention to, and use of, so-called alternative dispute resolutions. These practices—mediation, negotiation, and arbitration—tend to be less expensive and quicker than traditional litigation by eliminating courtroom trials and reducing dependence on lawyers. The second development has been the proposal to allow paralegals to provide many of the routine and simple services now provided by lawyers. Proponents of this idea argue that it provides greater access to basic legal services for the poor and the middle class. Critics maintain that such a practice runs too great a risk of providing misinformation. The third issue is the emergence of do-it-yourself kits which eliminate the need for lawyers altogether for basic legal services. The fourth development is the beginning of direct mail solicitation by a few lawyers, a practice as controversial as advertising but not yet tested in the courts.

KEY POINTS

- The legal profession has always maintained that lawyers have a moral responsibility to provide legal services to the poor. This is called *pro bono* activity.
- Cutbacks in the ability of federal agencies to provide legal services to the poor has led to the suggestion that lawyers' *pro bono* activity be required.
- While agreeing that lawyers should provide *pro bono* work, opponents of mandating it claim that this is unfair to lawyers, not practical, and perhaps unconstitutional.
- In *Bates* the Supreme Court ruled that lawyers have a constitutional right to advertise their services providing that the advertising is not false, deceptive or misleading.
- The debate over the propriety of lawyers' advertising continues. Issues include whether advertising degrades the profession, whether it informs or misleads the public, whether it provides greater access to more affordable legal services, and ultimately whether the law is a business as well as a profession.
- There has been rapid growth in lawyers' advertising in recent years although a majority of lawyers do not advertise.

METHODS

Previewing Discussion Questions and Activities

Before viewing Segment Two of the program explain to students that this segment examines whether lawyers should be required to provide legal services to the poor for free. To introduce this issue ask students to consider the following scenario:

In the year 1995, the Commissioner of Baseball announces that all professional baseball players are required to play exhibition games free of charge so that the proceeds can go to the poor. The Commissioner justifies this action by saying that baseball players are an important

role model for young people; and that the players owe something to a society that pays their salaries. A number of baseball players refuse to play saying, that it is not fair.

- a. Ask students whether they agree with the Commissioner or the players.
- b. On the board write "Commissioner" and "Players." Have students brainstorm the reasons for supporting each side and write them under the appropriate title.

At The Break

1. After watching the first part of this segment (at approximately 33 min.) have students discuss the following question: Should lawyers be required to provide *pro bono* legal assistance? Why or why not?
2. After watching the second part of this segment (at approximately 43 min.) have students discuss the following questions:
 - a. What are the arguments in favor and against lawyer's advertising their services?
 - b. The Supreme Court ruled in the Bates case that lawyers could advertise their services. Should there be any restrictions on lawyer's advertisements? Why or why not?
 - c. What is the difference between a legal clinic and a traditional law firm? What are some advantages and disadvantages to legal clinics?

Postviewing Questions and Strategies

1. Have students bring in three advertisements for lawyers from a newspaper or the yellow pages. (You might also be able to obtain a copy of a television advertisement.) Students should analyze each advertisement to determine the following: What is the purpose of the advertisement? At whom is the advertisement aimed. What information does the advertisement provide? What other information would you like to have? Is the advertisement effective?
2. Break the class into groups of three to five students. Have each group develop a legal advertisement and present it to the entire class. Have the entire class evaluate the advertisement to determine if it is false, deceptive or misleading. Compare different advertisements in terms of information provided (e.g. cost, experience, size).
3. Stage a debate using the question: "Should lawyers be able to advertise their won-loss record?"
4. Read the following questions. Decide whether the issue in each is ethical or factual. An ethical issue asks whether something is right or wrong. A factual issue asks whether something is true or false.
 - a. Do lawyers have a constitutional right to advertise? (factual)
 - b. Should lawyers donate their time to provide legal services to the poor? (ethical)
 - c. Is it fair to require lawyers to donate their services to the poor? (ethical)
 - d. Was the advertisement in the Bates case misleading? (factual)
 - e. Does former Chief Justice Burger think that lawyers should advertise? (factual)
5. All fifty states presently prohibit non-lawyers from practicing law. It has been suggested recently that trained non-lawyers

or paralegals be allowed to give legal aid on basic matters such as filling out legal forms, and advice on routine cases such as uncontested divorce, simple wills, name changes, and adoption. Those in favor of this practice argue that it will provide simple, low-cost services for the poor and middle-class.

- a. Do you think non-lawyers should be allowed to give legal advice? Why or why not?
- b. Brainstorm other solutions to the problem of providing legal services to the public?
- c. Bring do-it-yourself kits to class.
6. Invite lawyers from a local legal aid agency or a legal clinic to discuss their type of practice.
7. Optional student reading: For a discussion of the current status of providing legal services to the poor, have students read "The Unrepresented: Litigious U.S. Society Affords Fewer Lawyers for the Poor Nowadays," *Wall Street Journal*, June 9, 1986, page 1. Have students research what type of *pro bono* services are provided in their community.

CASE STUDY

Bates v. State Bar of Arizona

This case study uses the Bates case discussed in the program to allow students to explore this issue further.

FACTS: In 1974, two young lawyers, John Bates and Van O'Steen opened a "legal clinic" in Phoenix, Arizona designed to provide legal services at a moderate cost. To do this the lawyers relied on attracting a large number of clients. In February 1976, the lawyers placed an advertisement in the *Arizona Republic* newspaper in an effort to attract more clients. The advertisement read, "DO YOU NEED A LAWYER? LEGAL SERVICES AT VERY REASONABLE FEES". The ad then went on to list their fees for such matters as uncontested divorces, adoption, and bankruptcy. The Arizona Bar Association accused the lawyers of violating a disciplinary rule that prohibited lawyers from advertising in newspaper, on radio, television, and even in the Yellow Pages. Bates and O'Steen were suspended from practicing law for one week each. The lawyers appealed their cases to the U.S. Supreme Court, arguing that the prohibition of lawyer advertisements violated their First Amendment right of free speech.

Questions

1. What happened in the Bates case? Why were Bates and O'Steen prohibited from advertising their services?
2. What arguments can be made to support a ban on lawyers advertisements? (Possible answers include that advertisements might be misleading and the practice of law should be different from other occupations.)
3. What arguments can be made in support of allowing lawyers to advertise? (Possible answers include that advertising will help provide needed information to consumers; it will increase competition and thereby reduce the cost of legal services; and that lawyers have a First Amendment right to advertise.)
4. In your opinion, should lawyers be allowed to advertise their services? Briefly explain your answer. (Possible answers may vary and students should give reasons to support their answers.)

NOTE: This case is based on *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). The U.S. Supreme Court held that lawyers have a constitutional right under the First Amendment to advertise their services provided the advertisements are not "false, deceptive or misleading."

SEGMENT THREE

Regulating the Legal Profession

ISSUES PRESENTED

- What happens when a lawyer does not act ethically?
- How can the regulations of the legal profession be improved?

SUMMARY

The final segment of the program examines the consequences of lawyers acting improperly. What should the legal profession do about lawyers who break the law, swindle a client or provide incompetent service? How effective is the legal profession in handling these cases?

The legal profession continues to be primarily self-regulating, through each state's highest court or bar association. This regulation includes establishing the criteria for admission to the legal practice in the state as well as enacting standards governing conduct of lawyers. These standards generally follow those formulated by the American Bar Association. Since 1908, the ABA has adopted three separate sets of ethical guidelines. The most recent, adopted by the ABA in 1983, are the Model Rules of Professional Conduct. The Model Rules are intended to define a lawyer's professional role and behavior. Each Rule is followed by an explanatory comment, to provide additional guidance for implementing the Rule. Critics of these rules allege that establishing only *minimal* levels of acceptable conduct does not foster overall professionalism, and that the rules are ambiguous and provide insufficient guidance to the practicing lawyer.

Each state creates disciplinary commissions, generally made up of lawyers who investigate misconduct and impose sanctions. A lawyer may be disciplined for a variety of infractions, including violating a disciplinary rule (*e.g.*, not showing up at court) or committing a crime involving 'moral turpitude' (*e.g.*, murder, theft, robbery). Disciplinary commissions usually have three levels of punishment (1) Disbarment—this most extreme punishment results in the permanent revocation of a lawyer's license to practice; (2) Suspension—the temporary revocation of a license, which varies anywhere from a few days to several years; and (3) Reprimand or censure—in which the lawyer can still practice, but has been publicly (or privately) reprimanded.

Reform Efforts

Most complaints against lawyers concern overcharging, negligence, and incompetence. But what increasingly disturbs the public as well as government officials, is the legal profession's seeming inability to discipline lawyers even when they actually commit crimes.

Available statistics on lawyer discipline are not encouraging. As Professor Deborah Rhode explains, "About .02% of all complaints against lawyers result in disbarment." While sanctions against lawyers are on the rise, punishment still tends to be slight.

As *Ethics On Trial* reflects, criticism of lawyer discipline has prompted reform efforts at the grass roots level. A national organization, Help Abolish Legal Tyranny (HALT), monitors legal misconduct and lobbies for change. At the personal level, Jim Kelly single-handedly uncovered his lawyer's misconduct and Delores Bonner has organized her own reform movement. The general thrust of efforts like these has been to make the disciplinary process more responsive

to the public's needs by ensuring that swift and appropriate punishment is imposed on wayward lawyers.

The fundamental criticism of current lawyer discipline is that lawyers are too reluctant to punish their peers. In addition, critics charge that too much of the current disciplinary process is kept secret, even from complainants and future clients. *Ethics On Trial* chronicles the efforts of Delores Bonner and others to take the regulation of lawyers in California away from lawyers and place it in the hands of public review boards. While the California effort has so far proven unsuccessful, a number of state disciplinary commissions are now completely separate from the lawyer-run bar associations. Inside the bar, the increased attention to lawyer misconduct has prompted other lawyer-operated commissions to pay greater attention to the public interest in disciplining members of their profession.

KEY POINTS

- The legal profession is regulated at the state level by a court or bar association.
- Lawyer discipline can include disbarment, suspension, or reprimand.
- The legal profession has been criticized for its inability to regulate adequately its members' conduct.
- Grass roots reform efforts call for disciplinary boards to include non-lawyers.
- A number of states have established disciplinary commissions consisting of non-lawyer members, and bar associations are placing greater emphasis on the disciplinary process.

METHODS

Previewing Questions and Activities

Before viewing Segment Three (at approx. 44 min.) of the program, ask students how rules are enforced in their own lives. For example, how are rules enforced at school, at home, in sports, among their friends? To what extent do they regulate their own conduct? Would they prefer discipline by their brothers and sisters, or classmates, or by parents? Explain to the students that this segment of the program looks at how the legal profession regulates the conduct of lawyers.

Postviewing Questions and Strategy

At the end of Segment Three discuss the following questions with students.

1. Review with students the actions of the lawyers for the Franklins, Jim Kelly, and Delores Bonner. Explore how each of their lawyers allegedly acted improperly. What do you think should happen to lawyers who act improperly?
2. Do you think lawyers should be monitored by disciplinary commissions that include non-lawyers? What are the advantages and disadvantages of such a system? Do non-lawyers know enough about the practice of law to help regulate lawyer's conduct?
3. Why do you think the admission to the practice of law and the professional conduct of lawyers is regulated? Should it be regulated? Why or why not?
4. Should legal disciplinary hearings be open to the public? Why or why not.

5. When lawyers act improperly a variety of actions can be taken against them by disciplinary review boards. Pretend that you are a member of a review board. For each of the following situations decide whether the lawyer should be (a) disbarred, (b) suspended for a certain period, or (c) reprimanded. Briefly explain your answer.

(Answers to these may vary and students should give reasons to support their answers.)

- a. Tony, a lawyer, fails to appear on several court dates. His client loses the case as a result.
 - b. Martha provides legal services at reduced fees. To maintain her practice she needs to take on more and more cases. As a result, her clients do not get the best representation.
 - c. Steve, a defense attorney, is convicted for possession of a small amount of cocaine.
 - d. To get a job in a law firm, Carolyn lies about her academic record on her resume.
 - e. Steve settles a case without notifying his client.
6. Read the following questions. Decide whether the issue in each is ethical or factual. An ethical issue asks whether something is right or wrong. A factual issue asks whether something is true or false.
 - a. Should the public serve on lawyer disciplinary commissions? (ethical)
 - b. Was the Franklins' lawyer punished for stealing their money? (factual)
 7. Divide the class into groups of three to five students. Tell the class that each group is to develop a list of questions clients should ask when they are looking for a lawyer. Alternatively, have each group develop a "Client's Bill of Rights"—a list of rights that all clients should have when working with a lawyer (e.g., a right to be told all fees or rates). Compare the lists generated by the groups and discuss reasons for specific items in the lists.
 8. Invite a resource person from a legal disciplinary board or from another professional review board to discuss regulating members' conduct.
 9. Optional student reading: For a discussion of the regulation of lawyers, have students read "Lawyers—Can They Police Themselves?" *U.S. News & World Report*, June 1977. Have students research how lawyer's activities are regulated in their community.

CASE STUDY

Strickland v. Washington

Related to the issue of lawyer discipline is the issue of ineffective counsel. The Sixth Amendment provides that criminal defendants have the right to counsel, but the courts usually have avoided offering many detailed decisions that would explain precisely what is *effective* representation. The following case examines the question of what type of error on the part of a lawyer will be viewed as having deprived the client of "effective" assistance.

Steven Washington, against the advice of his lawyer, Mark Strickland, pleaded guilty to committing three brutal murders. After pleading guilty, the judge told Washington that he had a great deal of respect for people who stepped forward and took responsibility for their actions. At the sentencing hearing, Strickland presented very little evidence on behalf of Washington, and the judge sentenced Washington to death.

Washington appealed his sentence to the U.S. Supreme Court. Washington claimed that Strickland's actions deprived him of his Sixth Amendment right to effective counsel. Specifically, Washington argued that Strickland should have presented more evidence at the sentencing hearing. By not presenting more evidence, Washington claimed, Strickland's representation fell below a minimum standard of conduct. Washington asked the Supreme Court to overturn his death sentence. Strickland argued that he had not presented more evidence because he thought, based on the judge's comment, that the judge would have "mercy" on his client and not impose the death sentence. Moreover, Strickland contended that his decision was part of a lawyer's strategy and could not be evaluated simply on the basis of whether the client won or lost.

Questions

1. What arguments might Washington make to bolster his claim that he had been denied effective counsel? (Answers include that Strickland presented very little evidence at the sentencing hearing and the fact that Washington has been sentenced to death.)
2. What arguments might Strickland make to support his claim that he provided adequate legal assistance? (Answers include that he did present some evidence; he thought that the judge would be lenient; his decision cannot be judged merely on whether it worked or not; and finally that the defendant pleaded guilty against his advice.)
3. In your opinion, should Washington's death sentence be overturned because Strickland did not present more evidence at the sentencing hearing? Briefly explain your answer.

NOTE: This case is based on *Strickland v. Washington*, 466 U.S. 668 (1984). The U.S. Supreme Court held that Strickland's action had *not* denied Washington effective counsel. The Supreme Court set up a two-part test to determine when a lawyer's conduct amounts to ineffective assistance. First, the lawyer's conduct must be outside the wide range of accepted standards of professional conduct. Second, the lawyer's conduct must have caused "actual prejudice" and not just some conceivable effect on the outcome of a case. Applying this test to Strickland's action, the Supreme Court ruled that his conduct did not amount to ineffective counsel.

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